

**Remarks:**

Claims 1-4, 6-12, 14-15, and 19-26 remain in this application. Claims 5, 13, and 16-18 have been canceled. Claims 1-4, 6-12, 14-15, 20-24, and 26 have been amended. Amended claims 1 and 22 find support in original claim 13; in FIGS. 1, 4, and 15-17; and in the specification at paragraphs [0027], [0029], and [0040]. Amended claims 3 and 4 find support in the FIGS. and in paragraph [0027]. Amended claim 15 finds support in original claims 16 and 18. Amended claims 2, 6-12, 14, 20-21, 24, and 26 are amended to correct typographical errors and/or to state their elements more clearly.

Claims 8-11, 16-18, and 26 are rejected under 35 U.S.C. 112 as being indefinite.

The means clauses have been eliminated from claims 8 and 26 and claim 16 has been cancelled. The term “eyelet” in claims 10 and 11 has been replaced with “aperture”.

Claims 1-6, 8, 13-16, and 20-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Yarnitsky et al. (US6287324).

Regarding amended claim 1, Yarnitsky fails to disclose “the proximal body portion having opposed gripping portions moveable between an open position and a closed position, the gripping portions defining a suture receiving aperture between them, the aperture being relatively larger and able to receive the suture in sliding relationship when the gripping portions are in the open position and the aperture being relatively smaller and able to grip the suture in gripping relationship when the gripping portions are in the closed position”. Examiner characterizes Yarnitsky’s “flexible locking element 16” as a deformable body portion for deforming the aperture. However, Yarnitsky’s “locking elements 16” are in fact barbs that spring open to grip body tissue and have no effect on the size of aperture 28 [5:47-61; 6:16-30; 6:61-7:4].

Yarnitsky's device grips the suture the same way in both closed position FIG. 4 and the open position when the elements 16 are sprung outwardly. Yarnitsky's elements 16 are in the open position and gripping tissue when the device is in use. If his device released the suture at this point as implied by Examiner it would be non-functional as it is necessary for it to retain the suture when it is gripping the tissue in order to function. There is no suggestion in Yarnitsky that element 16 grips the suture or effects gripping of the suture in any way. There is no change in size of Yarnitsky's aperture and there is no deformation of any element in Yarnitsky since the element 16 appears to simply pivot from a parallel orientation in the closed position to an extended orientation in the open position. Since Yarnitsky fails to disclose all of the elements of claim 1, claim 1 is allowable over Yarnitsky.

Further regarding claim 1, Yarnitsky fails to disclose "the proximal body portion being responsive to insertion into the body tissue to move from the open to the closed position". Yarnitsky's device moves from the closed to the open position after insertion to grip the surrounding tissue. Furthermore, since the distal portion of Yarnitsky's device is significantly wider than elements 16 when elements 16 are in the closed position [FIG. 4], there would be no reason for the elements to move into the closed position in response to insertion. Since Yarnitsky fails to disclose all of the elements of claim 1, claim 1 is allowable over Yarnitsky.

Claims 2-4, 6, 8, and 14 depend from claim 1 and are allowable for the same reasons as claim 1.

Regarding claim 15, Yarnitsky fails to disclose a changing aperture as discussed relative to claim 1. Note that the only mention of a suture attachment in Yarnitsky is by means of a hole 30

which receives suture material [6:22-29]. There is no suggestion that the suture is even tied to this hole. There is also no suggestion that this hole changes in size or shape in any way.

Furthermore with regard to claim 15, Yarnitsky fails to disclose “a locking mechanism comprising a transverse body member extending from each of the first body members, the transverse body members being in sliding contact from the open position to the closed position, the transverse body members defining a male/female engagement mechanism in which a portion of one transverse body member snaps over a portion of the other transverse body member in positive engagement to lock the first body members in the suture locking position”. Yarnitsky discloses no locking mechanism at all. Thus, claim 15 does not read on Yarnitsky and is allowable over Yarnitsky.

Claims 20 and 21 depend from claim 15 and are therefore allowable for the same reasons as claim 15.

Claim 20 is further allowable over Yarnitsky because Yarnitsky fails to disclose “wherein the proximal body portion has a generally elliptical cross sectional shape when the elongated members are in the suture receiving position and a generally circular cross sectional shape when the elongated members are in the suture locking position”. Yarnitsky’s proximal body has exactly the same shape regardless of the position of elements 16. As pointed out previously, the portion of his device below elements 16 does not move or change in any way when elements 16 move. Furthermore, elements 16 only define two points in space that move toward and away from one another. Whatever cross-sectional shape, if any, elements 16 define, it does not change from generally elliptical to generally circular.

Regarding claim 22, Yarnitsky fails to disclose “inserting the suture anchor into the body tissue to simultaneously reduce the aperture and grip the suture”. Thus, claim 22 does not read on Yarnitsky and is allowable over Yarnitsky.

Claims 24-26 depend from claim 22 and are allowable for the same reasons as claim 22.

Claim 26 is further allowable over Yarnitsky because Yarnitsky fails to disclose “engaging a locking mechanism to retain the aperture at its reduced size”. Yarnitsky has no locking mechanism.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yarnitsky et al. (US6287324) in view of DiPoto et al. (US5258016).

Claim 7 depends from claim 1 and is allowable for the same reasons as claim 1.

Claims 9-11, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yarnitsky et al. (US6287324) in view of Gogolewski et al. (US5236431).

Claims 9-11 and 19 depend from claim 1 and are therefore allowable for the same reasons as claim 1.

Claim 9 is further allowable over the combination because the combination fails to disclose “a first portion defining a lock projection and a second portion defining a lock recess for receiving the lock projection, the first and second portions sliding adjacent one another between the open and closed positions, the lock projection positively engaging the lock recess in the closed position”. Neither reference discloses portions that slide adjacent one another but rather both disclose members that move toward and away from one another. Likewise, neither discloses positively engaging members that lock the members in the closed position.

Gogolewski appears to disclose an alignment tab that aligns the two halves of his device, but there is no locking mechanism.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yarnitsky et al. (US6287324) in view of Schwartz et al. (US6293961).

Claims 17 and 18 have been cancelled.

Applicant believes that the claims remaining in this case are in condition for allowance and respectfully requests that a timely Notice of Allowance be issued in this case. Examiner is encouraged to contact Applicant by telephone with any questions about the content of this amendment or to discuss allowable subject matter to facilitate placing this case in condition for allowance.

Respectfully submitted,

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